IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1565 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAVITABEN MADHUKAR MAKIWANA

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MR PRASHANT G. DESAI, GOVERNMENT PLEADER for Respondent No. 1

SERVED BY DS for Respondent No. 2

NANAVATY ADVOCATES for Respondent No. 3

MR BR KYADA for MB KYADA for Respondent No. 4

MR NC NAYAK for Respondent No. 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 25/07/97

ORAL JUDGEMENT

The petitioners who are the elected Councillors of the respondent No.3 Municipality have challenged the

order dated 12th February, 1997 - Annexure "H" to the petition, passed by the State Government under the provisions of Section 263 (1) of the Gujarat Municipalities Act, 1963, dissolving the respondent No.3 - Kalol Municipality and appointing the Deputy Collector of Mehsana to be the Administrator.

2. In the election of the Municipality which was held in 1994, the petitioners who are 23 Councillors and other Councillors were declared elected. In January, 1995, President, Vice-President and Chairman of the Standing Committee of the Municipality were also elected. There were in all 36 Municipal Councillors in the respondent Municipality, of whom one passed away. According to the petitioners, six defaulting Councillors had passed certain resolutions behind their back, which were not acceptable to the petitioner.

3. The acts of mis-management had attracted the attention of the concerned authorities and a show cause notice dated 7th January, 1997 was issued to the Municipality by the Government under Section 263(1) of the Act. The Municipality was called upon to show cause as to why it should not be dissolved under Section 263(1) for the reasons which were mentioned in the schedule to the show cause notice. As many as fifteen grounds were mentioned in the said schedule.

4. Thereafter, the Municipality convened a meeting on 16.1.97 in which previous resolutions No. 124 to 143 were disapproved and resolution No. 149 was passed resolving to defend the Municipality against the show cause notice, on the grounds detailed therein against each of the allegations which were contained in the schedule of the show cause notice. A reply to the show cause notice was sent pointwise by the Municipality in its communication dated 10.2.97 and the said resolution No. 149 dated 16.1.97.

5. On 15.1.97 the Director of Municipality had initiated proceedings under Section 37(1) of the said Act against the President of the Municipality. Most of the allegations contained in the notice, a copy of which is at Annexure "F" to the petition, were also contained in the notice issued by the State Government against the Municipality under Section 263(1) of the Act.

6. The hearing of the proceedings under Section 263(1) was held on 11.2.97 and the Government was informed by the said communication dated 10.2.97 that beyond the written explanation given to the show cause

notice, no further representation was to be made. The matter was heard by the Deputy Secretary of the Government Mr. A.A.Nagori, who made the impugned order on 12.2.97 holding that for the reasons indicated in the appendix, he was of the view that the Kalol Nagar Palika was not competent to discharge its functions and that it should be dissolved and he accordingly ordered the dissolution and appointed the Administrator. This order has been challenged in the present petition and at the time of issuance of the notice on 19.2.97 my esteemed brother Hon'ble Mr.Justice J.M.Panchal, by way of ad-interim relief, directed the parties to maintain status-quo as it prevailed on that day. On 22.4.97 it was declared by the learned Counsel appearing for the State that the Administrator had taken over the charge of the Kalol Municipality on 17.2.97. Therefore, while admitting the petition, my esteemed brother Hon'ble Mr.Justice D.G. Karia ordered that the status-quo should continue. Admittedly, thereafter the Administrator has been in-charge of the Municipality.

7. The parties feeling the urgency of the matter moved this Court for final hearing on the grounds that fresh elections would be held as are required to be held within six months from the date of the appointment of the Administrator and that election programme was likely to be declared in a day or two. That is how the matter was urgently heard at the instance of both the sides and it was ordered that the election programme will not be published pending further orders in this petition.

8. It was contended on behalf of the petitioners that the Officer Mr. A.A.Nagori who made the impugned order could not have made the order because he was transferred to Bhavnagar from Sachivalaya, Gandhinagar on 12th of February, 1997. It was stated that the dates which were shown by rubber stamp on the order which was sent to the Municipality indicated that earlier the date was put as 14.2.97 and therefore, the date "14" was erased and a fresh stamp of 12.2.97 was placed on the impugned order. Mr. A.A.Nagori, in context of this contention, has filed an affidavit stating that the impugned order was passed by him on 12.2.97 and that he had signed the same before leaving the charge of the post of Deputy Secretary. There is no reason to doubt this assertion and in view of what has been said by A.A.Nagori in his affidavit, it is clear that the impugned order has been made on 12.2.97 and he had signed the same before leaving the charge.

9. The learned Counsel appearing for the petitioners

then contended that the impugned order was made in gross violation of the principles of natural justice. It was submitted that though detailed reply containing explanation against the allegations was sent by the Municipality by forwarding its resolution No. 149 dated 16.1.97 and the letter dated 10.2.97, the concerned officer had not applied his mind to the stand taken up by the Municipality against each of the allegations levelled in the schedule to the show cause notice. It was further contended that the authority had relied upon a letter dated 29.12.96 which was addressed to it directly by an Advocate, eventhough in the reply to the show cause notice the Municipality had in terms pointed out that the copy of that letter was not received by the Municipality as was mentioned in the show cause notice. It was further pointed out that perusal of the impugned order shows that the concerned authority had only repeated what was said in the show cause notice and there was no indication in the impugned order of any application of mind to the reply which was sent by the Municipality. It was further argued that many of the allegations contained in the order which are said to have been proved were against the previous President and further that all the Councillors cannot be made to suffer because of some misconduct on the part of the office-bearers. It was stated that action was being taken against the President and in fact criminal complaints were filed against the office-bearers in respect of the wrongs allegedly committed by them. Relying upon the decision of the Supreme Court in Radhesham Vs. State of M.P - AIR 59 S.C 107, it was contended that dissolution of a Municipality on the grounds alleged against the Municipality was clearly a stigma on all the Councillors and therefore, it was incumbent upon the concerned authority to have considered all the aspects of the matter as urged before it in the resolution No.149 dated 16.1.97 of the Municipality and the letter dated 10.2.97.

10. The learned Government Pleader appearing for the State Government strongly contended that the impugned order took into consideration the reply of the Municipality and has been passed after observing the principles of natural justice, in accordance with the provisions of Section 263(1) and this Court should not sit in Appeal over the decision rendered by the State Government. He pointed out from the impugned order the words in its opening portion to the effect that the reply dated 10.2.97 and the resolution of the Municipality were taken into consideration. He emphatically submitted that it was not necessary for the authority to give a detailed and elaborate reasons as the Courts do in their

judgements because it was only a quasi-judicial authority vested with the powers in exercise of which the detailed procedural and other provisions applicable to Courts need not be followed. He relied upon the decision of the Supreme Court in the case of S.N. Mukherjee Vs. Union of India - AIR 1990 S.C 1984 in support of his submission that the quasi-judicial authority is not required to give details as elaborate as in the decisions of a Court of law. The learned Government Pleader further argued that the purpose underlying Section 37 and one underlying Section 263 of the Act were entirely different. Under Section 37, penal action was contemplated against the President, Vice-President or Councillors while under Section 263 of the Act, it was a collective action against the entire Municipality which may not be competent to perform its duties or deliberately makes defaults in performance of its duties under the Act or which abuses its power. It was submitted that the dis-qualification which ensues an action taken under Section 37 is not there when there is dissolution of a Municipality. Therefore, the mere fact that action was initiated against the President by the Director of Municipalities under the provisions of Section 37 would not preclude the State Government from taking action against the Municipality under Section 263.

The learned Government Pleader also argued that on going through the reply given by the Municipality it is clear that there was no substantive explanation given and there was no denial of the allegations, but the only defence put forth was that the wrongs were committed by the office-bearers.

11. The learned Counsel appearing for the respondent No.4 strongly contended that the Councillors cannot escape their collective responsibility by pointing their finger at the President or other office-bearers. All the Councillors including the office-bearers must stand or fall together and the majority of all Councillors cannot raise the contention that the wrongs were committed by the office-bearers. He contended that it was their duty to take timely action against the erring officers by passing resolutions for removing them. It was further contended that it was not necessary for the concerned authority to look into each and every objections raised by the Municipality and the impugned order was reached by the subjective satisfaction of the officer concerned on the basis of over-all circumstances.

12. There cannot be any dispute about the proposition that the nature of power exercisable under Section 37 of

the Act is different from the power that may be exercised under Section 263 of the Act. Therefore, even if any proceedings are instituted against any Councillor or any President or Vice-President of the Municipality for his removal from office, the State Government would not be precluded from initiating proceedings of dissolution of a Municipality under Section 263 of the Act. Depending upon the facts of each case, there can be allegations of mis-conduct against the office bearers which may over-lap with the duties of the Municipality and for such conduct, action may be warranted either under the provisions of Section 37 or under Section 263 as well. Therefore, the impugned order cannot be assailed on the ground that proceedings were initiated against the President under Section 37 (1) of the Act or that the prosecution were launched for the offences allegedly committed by the office-bearers.

13. The Municipalities have various functions to perform, as indicated in the said Act. The Committees are constituted for specific purposes which are laid down. The duties of various functionaries are mentioned in various provisions of the Act. The decisions are taken by the Municipality in meetings and by majority. The decision when taken by the Municipality by majority would bind the Municipality and the minority Councillors cannot later in a proceedings under Section 263 of the Act defend themselves by saying that they did not share the view of the majority. The responsibility of the Municipality in that context is a collective responsibility and therefore, when action is initiated under Section 263 by the Government against the Municipality for failure of its duty, then it would be judged in context of the majority decisions or in context of inaction, which would lead the authority to come to a conclusion that the Municipality is not competent to discharge its functions or that there is wilful default in discharge thereof. However, if action is initiated against the Municipality on the ground that the Councillors did not take necessary collective steps against the wrongful action or inaction of the office-bearers, the show cause notice should contain such allegations which can be dealt with by the Municipality.

14. The allegations which were levelled in the show cause notice contained in the schedule thereto were the allegations against the Municipality. After narrating the separate grounds in first 14 paragraphs, in the next paragraph there is a reference to a letter of an Advocate (late Mr.Ajit Padiwal) dated 29.12.96, which was

addressed to the Government. It is stated that even that letter indicated that the Municipal Board has not remained active and that it was necessary in the public interest to dissolve the Municipality. A xerox copy of that letter was stated to have been forwarded with that show cause notice. In the allegations contained in the schedule, it was alleged that the office-bearers of the Municipality and the Municipal Board had acted contrary to the concept that they were the trustees of the Municipal property and its funds. It was alleged that the Municipality had failed to make recoveries of the amounts due from the octroi contractor as detailed therein. It was also alleged that the Municipality had made appointments of 190 persons in excess of the sanctioned posts and that it had flouted the directions of the Collector which were given against such wrong appointments. There are allegations to the effect that education cess was not paid to the Government as per the law, that the safai kamdars were not given their pension, that wrong payments were made to a contractor, that the Municipality had failed in its duty in recovering the taxes, that purchases were being effected without proper planning and inviting tenders as per the Rules and Regulations, that proper attention was not being paid to public health, that log book of the vehicles was not being maintained, that the President of the Municipality had sanctioned huge amounts without following the prescribed procedure and obtaining the signature of the Chief Officer, etc. The Municipality in its resolution dated 16.1.97 prepared a reply to the Show cause Notice point-wise. It is a detailed reply against each allegation and at some places it has been stated that fault entirely is of the President and the Vice-President of the Municipality and for their individual wrongs the entire body of Councillors need not be dissolved. It was pointed out in paragraph 16 of the reply dated 10.2.97 that the copy of the letter of the Advocate which was referred to in paragraph 15 of the show cause notice was not received by the Municipality and therefore, they were not able to deal with it.

15. In the impugned order there is a reference to the reply dated 10.2.97 of the Municipality and its resolution No. 149 dt. 16.1.97 but the contents of these documents are not even reproduced and there is absolutely no indication in the impugned order which can show that the competent authority considered the objections put forth by the Municipality. All the contentions raised in detail in the resolution No. 149 dated 16.1.97 and the letter dated 10.2.97 were brushed aside by a mere observation that over and above the

office bearers the Municipality Councillors were also responsible and that they had not deliberated over the functions which they were required to discharge. It is stated that as a result of their inaction the works mentioned in the schedule were not done.

16. It would be interesting to compare the reasons which are given in the appendix to the final order with the allegations which were contained in the schedule to the show cause notice. On comparison it appeared that the appendix of the final order is a mere reproduction of the allegations which were contained in the schedule to the show cause notice, except for very minor and insignificant changes. On carefully going through the order it leaves a clear impression that the concerned Officer had not at all applied his mind to the objections which were raised by the Municipality against the show cause notice. Observance of principles of natural justice is not an empty formality. Verbatim repetition of the allegations in the show cause notice in the final order with no consideration of whatsoever of the details of the reply sent by the Municipality is a clear pointer to the non-applicability of mind by the concerned Officer.

17. Under Article 243U(1) of the Constitution it is provided that every Municipality, unless sooner dissolve under any law for the time being in force, shall continue for 5 years from the date appointed for its first meeting and that the Municipality shall be given a reasonable opportunity of being heard before its dissolution. Therefore, cutting short the normal tenure of a Municipality, which is of five years, is a serious proposition and the Constitution requires reasonable opportunity of being heard to be given to the Municipality before taking any such drastic action. The concept of reasonable opportunity would imply that the objections which are raised against the allegations which are levelled in the show cause notice are duly considered and that the order must reflect the application of mind. The impugned order is badly wanting in this requirement. Extraneous matters have also been taken into consideration. Despite the clear stand taken by the Municipality in its reply that a copy of the letter of the Advocate (late Mr. Ajit Padiwal), which was sought to be relied upon by the authority was not received, the concerned officer did not even take care to deal with that aspect in the order and has not even noticed the stand taken up by the Municipality that a xerox copy of that letter which was said to have been sent with the show cause notice was not received.

18. For forming an opinion that a Municipality is not competent to perform the duties imposed on it by or under the Act, it is incumbent upon the State Government to examine the facts and circumstances which are put forth as a defence by the Municipality for explaining its conduct. The expression "Municipality is not competent to perform or deliberately fails to perform duties imposed on it under the Act" would show that an isolated fault or inaction will have to be very weighty to attract this provision and that the general performance of the Municipality is required to be viewed in light of the explanation that it may have given and the opinion can be formed only after considering all the relevant aspects having bearing on the non-performance or inaction or deliberate defaults or abuse of power, as the case may be. The consequence of dissolution are drastic and therefore, before putting an end to the tenure constitutionally guaranteed, it becomes absolutely necessary for the State Government to strictly observe the principles of natural justice. The impugned order which has been made without application of mind to the objections raised by the Municipality clearly violates the principles of natural justice and cannot be sustained. It is therefore set aside. Rule is made absolute accordingly with no order as to costs.

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